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TOR: 270140Z JAN 77

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BT
 C O N F I D E N T I A L SECTION 1 OF 2 EC BRUSSELS 0808
 FOR S/AL AMBASSADOR-DESIGNATE RICHARDSON
 E.O. 11652: GDS
 TAGS: PLOS, EC
 SUBJECT: STRATEGY FOR INTERSESSIONAL CONSULTATIONS ON LAW OF THE
 SEA.

REF: STATE 298001

1. SUMMARY: ALTHOUGH NOT AN ACTION ADDRESSEE FOR THE REFER-
 ENCED TELEGRAM, THE MISSION PROPOSES ADDING THE EUROPEAN COM-
 MUNITY TO THE LIST OF COUNTRIES RECEIVING MAXIMUM US ATTEN-
 TION FOR THEIR IMPORTANCE TO THE SUCCESSFUL CONCLUSION OF THE
 LAW OF THE SEA NEGOTIATIONS. END SUMMARY.

2. EC MEMBER STATES AND THE COMMISSION ARE AGREED THAT THE
 COMMUNITY (PROBABLY BOTH THE EC COMMISSION AND THE COUNCIL)
 WILL HAVE TO SIGN AN EVENTUAL LAW OF THE SEA CONVENTION ALONG
 WITH THE 9 MEMBER STATES SINCE THE COMMUNITY EXERCISES COMPE-
 TENCE ON BEHALF OF ITS MEMBERS OVER SOME MATTERS WITHIN THE
 SCOPE OF THE EVENTUAL LOS CONVENTION AS PRESENTLY ENVISAGED
 (76 EC BRUSSELS 4065). CONVERSELY, NO MEMBER STATES COULD
 SIGN THE CONVENTION UNLESS IT WERE APPROVED BY THE
 COMMUNITY SINCE, UNDER THE RULING BY THE EC COURT OF
 JUSTICE IN THE ERTA CASE IN 1970, INDIVIDUAL MEMBER
 STATES DO NOT HAVE THE RIGHT TO CONTRACT OBLIGATIONS
 IN AN AREA FALLING WITHIN THE COMPETENCE OF THE EC.
 THE COMPETENCE OF THE COMMUNITY HAS NOW BEEN ESTAB-
 LISHED BY DECISIONS OF THE EC COUNCIL IN REGARD TO
 FISHERY MANAGEMENT AND CONSERVATION IN THE NEWLY EX-
 TENDED FISHING ZONES OF THE MEMBER STATES AND IN REGARD
 TO THE ACTIVITIES OF EC FISHING FLEETS ANYWHERE IN THE
 WORLD. A PENDING EC COUNCIL REGULATION SHOULD AMPLIFY
 EC COMPETENCE OVER FISHERY RESEARCH CONDUCTED BY THE
 MEMBER STATES.

3. EC COMPETENCE ALSO EXTENDS TO SOME ASPECTS OF CON-

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TROL OF POLLUTION OF THE SEAS, AND THE COMMUNITY IS SIGNATORY TO TWO INTERNATIONAL CONVENTIONS IN THIS RESPECT. WHILE SOME KEY MEMBER STATES ARE STILL RELUCTANT TO SEE AN ENLARGEMENT OF COMMUNITY COMPETENCE TO EXPLOITATION OF THE SEA BEDS AND THE POSSIBLE FUTURE NATIONAL "ECONOMIC ZONES" OF THE MEMBER STATES, SOME COMMISSION AND COUNCIL SECRETARIAT OFFICIALS BELIEVE THAT UNDER CONSTANTLY EVOLVING COMMUNITY LAW, EC COMPETENCE IN THESE MATTERS BASED UPON THE EC'S AUTHORITY PROVIDED BY THE TREATY OF ROME OVER COMMUNITY TRADE IN THE PRODUCTS DERIVING FROM SUCH EXPLOITATION WILL EVENTUALLY BE ESTABLISHED.

4. THE DESIRABILITY OF ESTABLISHING CLOSER CONSULTATIONS WITH THE EC ON LOS MATTERS, HOWEVER, IS NOT BASED SOLELY -- OR EVEN PRIMARILY -- ON THE FACT THAT THE EC WILL BE A SIGNATORY TO THE CONVENTION. OF PROBABLY EVEN GREATER PRACTICAL IMPORTANCE TO US INTERESTS IS THE INCREASING DETERMINATION OF THE COMMUNITY TO COORDINATE THE POSITIONS OF ITS NINE MEMBERS ON SUCH MATTERS AS UNLOS (AS WELL AS THE NORTH-SOUTH DIALOGUE, ENERGY DEVELOPMENT AND CONSERVATION, AND UNCTAD) WHERE EC COMPETENCE DOES NOT DERIVE COMPLETELY FROM THE TREATY OF ROME OR SUBSEQUENT EVOLVING COMMUNITY LAW. THE EC COMMISSION AND THE EC COUNCIL SECRETARIAT WENT TO CONSIDERABLE LENGTHS TO TRY TO ASSURE THAT THE EC-9 SPOKE WITH ONE VOICE (ALBEIT NOT ALWAYS SUCCESSFULLY) AT THE AUGUST-SEPTEMBER 1976 UNLOS CONFERENCE IN NEW YORK. TO THIS END, A SIX-MAN TEAM FROM THE COMMISSION AND AN EQUAL NUMBER FROM THE COUNCIL SECRETARIAT ATTENDED THE CONFERENCE IN AN OBSERVER CAPACITY AND HELD ABOUT 80 "COORDINATING SESSIONS" WITH MEMBER STATES AT NEW YORK. FURTHER MEETINGS OF WORKING LEVEL OFFICIALS WERE HELD IN LATE 1976 AND EARLY 1977, AND THE HEADS OF THE EC-9 LOS DELEGATIONS MET IN DECEMBER AND ARE SCHEDULED TO MEET AGAIN FEBRUARY 10 TO PREPARE A COMMON POSITION FOR THE NEXT UNLOS SESSION IN MAY. WHILE THESE MEETINGS ARE HELD NOMINALLY UNDER THE AUTHORITY OF THE EC COUNCIL, THE EC COMMISSION PREPARES THOROUGH STUDIES WITH POLICY RECOMMENDATIONS AS A

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BASIS FOR THESE COORDINATING SESSIONS (76 EC BRUSSELS
5735),

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 TO RUEHC/SECSTATE WASHDC 2867
 INFO ALL EC CAPITALS 3032
 RUFHGV/USMISSION GENEVA 7265
 RUEHDT/USMISSION USUN NEWYORK 1443

BT
 C O N F I D E N T I A L SECTION 2 OF 2 EC BRUSSELS 0808
 FOR S/AL AMBASSADOR-DESIGNATE RICHARDSON
 5. IN ADDITION TO HARMONIZING THE LOS POSITION OF ITS
 NINE MEMBERS, THE EC HAS A POTENTIAL INFLUENCE ON THE
 ACP GROUP OF DEVELOPING STATES WITH WHICH IT IS ASSO-
 CIATED THROUGH THE 1973 LOME CONVENTION. IN RESPONSE
 TO AN APPROACH FROM THESE STATES, THE EC IS SPONSORING
 A TECHNICAL SEMINAR FEBRUARY 22-25 TO INCREASE THEIR
 UNDERSTANDING OF THE ECONOMIC, TECHNICAL AND MANAGE-
 MENT ASPECTS OF DEEP-SEA BED MINING. INCREASING THE
 UNDERSTANDING OF LOS ISSUES BY THE RELATIVELY MODERATE
 MEMBERS OF THE ACP GROUP MAY STRENGTHEN THEIR WILLING-
 NESS AND ABILITY TO CHALLENGE IRRESPONSIBLE POSITIONS
 ADVANCED BY THE MORE EXTREME MEMBERS OF THE GROUP OF
 77 IN THEIR REGIONAL FORA. THUS, THE EC-9 MAY, BE-
 CAUSE OF THEIR TIES WITH SOME FORTY ODD LDCS, BE ABLE TO
 EXERT USEFUL INFLUENCE ON THE OUTCOME OF THE NEXT UNLOS
 CONFERENCE.

6. IN DETERMINING THE BEST POSSIBLE US APPROACH TO THE
 EC DURING THE INTERSESSIONAL PERIOD, IT MUST BE RE-
 CALLED THAT THE EC COMMISSION, UNLIKE A NATION STATE,
 DOES NOT BY ITSELF "DETERMINE" POLICY. RATHER ITS ROLE,
 WITHIN A LIMITED STAFF, IS TO PREPARE STUDIES AND ANALYSES
 CONTAINING POLICY RECOMMENDATIONS TO THE EC COUNCIL
 AND TO PARTICIPATE IN MEETINGS OF THE MEMBER STATES
 SEEKING TO COORDINATE THEIR POSITIONS ON LOS MATTERS.
 THE COUNCIL'S SECRETARIAT, WITH A SMALLER STAFF OF
 LEGAL CONSULTANTS AND EXPERTS, WORKS WITH THE COMMISS-
 ION AND ASSISTS THE EC COUNCIL PRESIDENCY COUNTRY
 (THE UK AT PRESENT) IN SEEKING A COMMON DENOMINATOR
 IN THE POLICIES OF THE MEMBER STATES AND IN ENCOURAG-
 ING ALL STATES TO ADAPT THEIR POLICIES TO THE POSI-
 TION HELD BY THE MAJORITY, UNDER THE COMMISSIONER

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TOR: 270132Z JAN 77

FOR EXTERNAL AFFAIRS, EAMON GALLAGHER, RECENTLY PROMOTED TO DEPUTY DIRECTOR GENERAL FOR EXTERNAL AFFAIRS (DG I) AND HEAD OF THE COMMISSION'S OBSERVER DELEGATION TO LAST YEAR'S UNLOS CONFERENCE, HAS PRIMARY RESPONSIBILITY FOR LOS MATTERS. HE IS SECONDED BY MICHAEL HARDY, A LEGAL ADVISOR TO THE COMMISSION. DANIEL VIGNES, ONE OF THREE LEGAL DIRECTORS OF THE COUNCIL SECRETARIAT, IS RESPONSIBLE FOR LOS MATTERS FOR THE SECRETARIAT. ALL THREE ARE WELL KNOWN TO D/LOS OFFICIALS.

7. THE MISSION SUGGESTS THE FOLLOWING MEASURES AS A MEANS OF INFLUENCING THE EUROPEAN COMMUNITY ON LOS MATTERS AND -- THROUGH THE EC -- TO SUPPORT OUR DIRECT BILATERAL EFFORTS IN REGARD TO THE EC MEMBER STATES AND THE ACP STATES TO HELP ACHIEVE A FAVORABLE OUTCOME FOR THE US AT THE NEXT UNLOS CONFERENCE;

A. AS EARLY IN THE NEW US ADMINISTRATION AS POSSIBLE HAVE THE SENIOR D/LOS OFFICIAL MEET IN BRUSSELS WITH EC COMMISSIONER HAFERKAMP IN THE COURSE OF A VISIT TO EUROPE TO CONSULT WITH "KEY COUNTRIES" IDENTIFIED IN REFTEL FOR A GENERAL REVIEW OF PRINCIPAL ISSUES TO BE RESOLVED IN SEEKING AN ACCEPTABLE LOS CONVENTION. THE POSSIBLE OPTIONS IN CASE AGREEMENT IS NOT REACHED AT THE NEXT UNLOS SESSION, INCLUDING POSSIBLE UNILATERAL NATIONAL ACTIONS ON DEEP SEA BED MINING, COULD ALSO BE BRIEFLY EXAMINED. THE OBJECTIVE WOULD BE TO ESTABLISH THE BASES FOR A CONTINUING DIALOGUE WITH THE COMMUNITY.

B. SEEK TO HOLD TECHNICAL CONSULTATIONS AT LEAST WITH THE COMMISSION AND, IF IT CAN BE ARRANGED WITHOUT UNDUE FUSS, JOINTLY WITH COMMISSION EXPERTS AND THOSE OF THE MEMBER STATES UNDER THE AEGIS OF THE EC COUNCIL, FOLLOWING THE EC TECHNICAL SEMINAR WITH THE ACP STATES ON DEEP SEA MINING IN FEBRUARY AND THE "EVENSEN MEETING" IN GENEVA ON COMMITTEE I WORK IN EARLY MARCH. THESE SHOULD REVIEW IN DEPTH ALL ASPECTS OF LAW OF THE SEAS MATTERS, TAKING INTO ACCOUNT THE ACCOMPLISHMENTS OF THESE TWO MEETINGS AND UNSOLVED ISSUES IN THE UNLOS CONVENTION. THE PRIMARY OBJECTIVE OF THESE TALKS WOULD BE TO BRING MAXIMUM US INFLUENCE TO

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BEAR BEFORE THE COMMUNITY HAS HARMONIZED THE POSITIONS
OF ITS MEMBERS FOR THE UNLOS SESSION IN MAY.
C. ROUTINELY PASS INFORMATION DIRECTED TO THE KEY
EC MEMBER STATES ALSO TO THE COMMISSION IN ORDER
TO ASSURE IT IS APPRISED DIRECTLY OF CURRENT US THINK-
ING ON MAJOR ISSUES.
D. IN THE EVENT AFTER THE MAY SESSION THAT AN IMPASSE
ON A UNLOS CONVENTION APPEARS TO MAKE UNILATERAL
NATIONAL ACTIONS FOR DEVELOPMENT OF THE SEABEDS INEVIT-
ABLE, THE US SHOULD PROMPTLY INITIATE CONSULTATIONS
WITH THE EC REGARDING THE CONTENT AND SCOPE OF LEGIS-
LATION WHICH THE US AND MEMBER STATES MIGHT SEEK TO HAVE
ENACTED I THOSE CIRCUMSTANCES, THERE WOULD BE
CLEAR NEED TO SEEK COMPATIBILITY OF NATIONAL LAWS AMONG
THE INDUSTRIAL STATES IN ORDER TO AVOID OR MINIMIZE CHAOS
AND POTENTIAL CONFLICT. HINTON